



April 15, 2020

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: WAIVER – EXPEDITED ACTION REQUESTED
Auction of Priority Access Licenses for the 3550 – 3650 MHz Band
Procedures for Auction 105
AU Docket No. 19-244

Dear Ms. Dortch:

Midcontinent Communications (“Midco”), through its attorneys, respectfully requests a waiver of the requirements of portions of section 1.2105 of the Federal Communications Commission’s (“Commission” or “FCC”) rules to the extent necessary to participate in the upcoming Auction 105, the auction of Priority Access Licenses in the 3.5 GHz Citizens Broadband Radio Service.¹ This request is being filed because Midco is structured as a general partnership that is 50% owned by Midcontinent Communications Investor, LLC (“MCI”) and 50% owned by a Comcast Midcontinent, LLC, an indirectly owned subsidiary of Comcast Corporation (“Comcast”), and Midco understands that Comcast may also be an applicant in Auction 105.

A. Background

Section 1.2105(b)(1)(ii)(B) of the FCC’s rules prohibits entities that are commonly controlled from filing overlapping auction applications. A controlling interest is defined to include any general partnership interest, such as the general partnership interest in Midco held by Comcast.² These rules are intended to

¹ Midco believes the only waiver required is a waiver of 47 C.F.R. § 1.2105(b)(1)(ii)(B) (if “entities commonly controlled by the same individuals or same set of individuals submit applications for any set of licenses in the same or overlapping geographic area in a single auction, then only one of such application may be deemed complete, and the other such application(s) will be deemed incomplete, such applicants will not be found qualified to bid, and the associated upfront payment(s) paid, will be returned.”). If, however, Commission staff deem it necessary or advisable, Midco also requests a waiver of the portions of 47 C.F.R. § 1.2105(a) and (b) as needed such that Comcast is not deemed to control Midco and thus will not be considered to be an “applicant” as to Midco’s Auction 105 application for purposes of the Commission’s auction rules. Midco is not in any respect asking for a waiver of the Commission’s prohibited communications rule, 47 C.F.R. § 1.2105(c). As discussed further herein, Midco has already put safeguards in place to ensure that it does not disclose any information about its possible bids or bidding strategy with any outside entity, including Comcast.

² 47 C.F.R. § 1.2105(a)(4)(i) (“The term controlling interest includes individuals with positive or negative *de jure* or *de facto* control of the application. *De jure* control includes holding 50 percent or more of the voting stock of a corporation or holding a general partnership interest in a partnership.”)



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ensure that commonly controlled entities do not submit multiple auction applications and coordinate their bids, thereby engaging in “anticompetitive bidding activity by manipulating elements of the auction process.”³ The prohibition is “designed to ensure that auction participants bid in a straightforward manner.”⁴

Here, that concern is not implicated because, as demonstrated below, Comcast and Midco are separate entities. Comcast in no way controls Midco and the two entities have and will continue to develop their own separate, independent auction strategies. As such, if both Comcast and Midco file applications to participate in Auction 105, both participants will bid in a straightforward manner and no anticompetitive bidding activity will occur.

B. Midco Operates Independently of Comcast

The current partnership agreement between MCI and Comcast was entered into in 1999 when Midcontinent Media and AT&T Broadband (formerly known as TCI) merged their cable operations in the Dakotas, Minnesota and Nebraska into Midcontinent Communications. The partnership continued after Comcast’s purchase of AT&T Broadband. Currently, MCI and Comcast Midcontinent, LLC (“Comcast Midcontinent”), an indirect subsidiary of Comcast, each have a 50 percent general partnership interest in Midco.

While the parties used a general partnership structure with both MCI and Comcast Midcontinent holding general partnership interests, Comcast acts (and has always acted) essentially as a passive investor in Midco. As the attached Declaration of Scott Anderson, Chief Legal Officer of MCI confirms, Midco is in no way controlled by Comcast. Under the parties’ partnership agreement:

- Comcast’s sole interest in Midco is its direct investment in Midco. It holds no interests, direct, or indirect, in MCI, the only other owner of Midco.⁵
- MCI is the managing partner of Midco, with the sole and absolute power to operate and manage Midco. Under the Midco partnership agreement, MCI has complete and unrestricted power and authority to manage the day-to-day business and operations of the partnership in its sole and absolute discretion.⁶
- Comcast Midcontinent has no power over the day-to-day operational management of Midco and, in fact, has no involvement in the operations of Midco.⁷ Comcast Midcontinent makes no

³ See *Updating Part 1 Competitive Bidding Rules, Report and Order; Order on Reconsideration of the First Report and Order; Third Order on Reconsideration of the Second Report and Order; Third Report and Order*, 30 FCC Rcd 7493, 7578 ¶ 202 (2015) (“2015 Part 1 Order”).

⁴ 2015 Part 1 Order at 7580 ¶ 206.

⁵ See Declaration from Scott Anderson, Chief Legal Officer, Midcontinent Communications Investor, LLC (the “Anderson Declaration”) at ¶ 3 (attached hereto).

⁶ *Id.* at ¶ 5.

⁷ *Id.*



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decisions and has no role in the decisions concerning services to be offered, pricing, marketing, customer service, geographic expansion, or any other operational aspect of the business.

- MCI makes all decisions concerning the operation of Midco and its business, including decisions concerning services to be offered, pricing, marketing, customer service, geographic expansion, spectrum acquisition, and all other operational aspects of the business.⁸
- Comcast Midcontinent's role in Midco is confined to a limited review of fundamental, extraordinary partnership decisions listed in the partnership agreement; decisions in which passive investors customarily have a role, including mergers and acquisitions, related-party transactions, and dissolution of the partnership. Comcast Midcontinent exercises this limited role through its power to appoint the minority of the management committee of Midco, namely two of the five members of such committee; MCI appoints the remaining three members.⁹

Based on both the terms of the partnership agreement and how Midco is actually managed, there is neither a factual nor legal basis to conclude that Comcast Midcontinent or Comcast should be treated as having control of Midco because control is vested in and exercised by MCI. Furthermore, the partnership agreement not only vests control in MCI, it also does not include any mechanism that would allow Comcast Midcontinent to take control other than by buying out MCI's interest in its entirety.

Under the longstanding criteria established by the FCC, all of the indicia of actual control point to MCI and none point to Comcast Midcontinent: it is MCI, not Comcast Midcontinent, which "is able to determine licensee policies and operations, or dominate corporate affairs."¹⁰ In fact, the FCC specifically recognized that MCI and its parent Midcontinent Media, Inc. control Midco when it approved the transfer of control of Midco to Midcontinent Media in 2010.¹¹ In sum, Comcast holds its interest in Midco as a passive investment, and neither exercises control nor has the power to do so.

C. Midco and Comcast Have Not and Will Not Communicate About Bids or Bidding Strategies

Midco and Comcast operate independently and in different markets. While Midco has discussed with Comcast Midco's interest in filing an application to participate in Auction 105, Midco has not and will not provide Comcast with any information regarding Midco's plans for the auction. Further, Midco and Comcast have not and will not discuss their Auction 105 bids or bidding strategies, or the post-auction

⁸ *Id.* at ¶ 6.

⁹ *Id.* at ¶ 7.

¹⁰ Northstar Wireless, *Memorandum Opinion and Order*, 30 FCC Rcd 8887 (2015) ¶ 52, *remanded on other grounds*, SNR Wireless LicenseCo, LLC, et al. v. Federal Communications Commission, 868 F.3d 1021 (D.C. Cir. 2017) (affirming control analysis, but remanding for additional proceedings on potential cure of improper control of applicant).

¹¹ See "Notice of Domestic Section 214 Authorization Granted," *Public Notice*, WC Docket No. 10-121, DA 10-1260 (July 6, 2010) (granting application for transfer of control of domestic Section 214 authorization held by Midcontinent from the Estate of N.L. Bentson to Midcontinent Media, Inc.); "International Authorizations Granted," *Public Notice*, DA No. 10-1239, Rep. No. TEL-01435 (July 1, 2010) at 6 (granting application for transfer of control of international Section 214 authorization held by Midcontinent from the Estate of N.L. Bentson to Midcontinent Media, Inc.).



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marketplace, until the anti-collusion rule “quiet period” ends.¹² Midco also has trained its staff on the requirements and restrictions of the FCC’s anti-collusion rule in connection with prior auctions and it plans to conduct similar training sessions in connection with its participation in Auction 105. Accordingly, Midco will be able to accurately certify in its short-form application, as required by section 1.2105(a)(2)(ix) of the Commission’s rules, that it has not and will not enter into any joint bidding agreement, arrangement, or understanding regarding the licenses available in Auction 105.¹³

Going forward, after the short-form filing deadline passes, Midco has plans in place to minimize all of its communications with Comcast. First, Midco has determined that its Management Committee will not meet during the Auction 105 quiet period. Next, Midco has implemented the following internal controls to ensure that all information about its bids and bidding strategies are protected from all outside parties, including Comcast:

- Midco has limited information about its possible bids and bidding strategies to a very small number of persons on a “need to know” basis – all of Midco’s auction information will be closely held. Going forward, Midco does not need permission from Comcast, the Management Committee, or the Partnership to participate in Auction 105.¹⁴
- Midco will train its staff, including senior and management staff, on the anti-collusion rule requirements.¹⁵
- Midco has an agreement with Comcast that the companies will not share auction information and will prevent their respective staffs from inadvertently sharing information by taking the following steps:
 - Midco has implemented measures to prevent any MCI or Midco personnel who interact with Comcast Midcontinent or Comcast from either possessing any information related to Midco’s bids or bidding strategies in the auction or communicating to Comcast Midcontinent or Comcast any such information they do possess.¹⁶
 - Similarly, Midco understands that Comcast will ensure that the Comcast and Comcast Midcontinent personnel who interact with Midco (including the Comcast Midcontinent managers) do not and will not have access to information concerning Comcast’s plans for Auction 105.
 - The two Comcast Midcontinent members of the Management Committee have recused themselves from receiving any information regarding Midco’s plans for the auction and from all meetings or discussions related to the auction, including any potential

¹² See 47 C.F.R. § 1.2105(c); Anderson Declaration at ¶¶ 8.

¹³ See, e.g., Letter from Scott Anderson, Chief Legal Officer, Midcontinent Communications to Derek H. Squire, Comcast Corporation (attached hereto).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

discussions related to capital expenditures in excess of those contemplated by the Partnership Agreement.¹⁷

- With respect to any Management Committee matters related to Auction 105, Comcast Midcontinent has waived the Partnership Agreement requirement that at least one Comcast Midcontinent manager must be present for a quorum.
- Comcast Midcontinent has committed not to seek access to any of the books and records of the partnership until after the deadline for submitting down payments for Auction 105 because of the potential that they could reveal Midco's plans with regard to Auction 105.

With these protective measures in place, Midco and Comcast each will be able to pursue its independent Auction 105 strategy without any involvement from the other, preventing any exchange of information about either party's bids or bidding strategies.

D. Waiver Standard

Section 1.925 governs requests for waivers of the wireless auction rules. Under the rule, the Commission can grant a waiver if it is shown that (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case and a grant of the waiver would be in the public interest; or (2) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative. Grant of the waiver requested herein meets both grounds.

First, the purpose of rule 1.2105 – to prohibit collusive or anticompetitive conduct – would not be served by barring either Midco or Comcast from participating in Auction 105 because there is no risk of collusive or anticompetitive behavior. The partnership was established over 20 years ago for the principal purpose of operating cable television systems, not for bidding in spectrum auctions, and Midco and Comcast have implemented numerous safeguards to prevent any information related to the auction, including either party's bids or bidding strategies, to be shared between them.

Grant of the requested waiver would also serve the public interest – an important element of both waiver grounds – because the Commission has repeatedly stated that maximizing the number of bidders benefits the public by promoting a successful auction, realizing the value of the spectrum and returning that value to the Government. Conversely, precluding either party's participation clearly would be contrary to the public interest and would be inequitable given that, in fact, Comcast plays no role in the control of Midco. Further, given Midco's rural footprint and commitment to serving rural areas, it would be contrary to the public interest, and contrary to the FCC's commitment to supporting rural broadband buildout, for Midco to be deemed ineligible to participate in the auction if Comcast also decides to file a short-form auction application. Indeed, given the rural nature of Midco's footprint, the Commission should find that the Midco-Comcast partnership is closely analogous to a qualified rural wireless partnership

¹⁷ The two Comcast members of the Midco Management Committee, Robert Pick and Robert Eatroff, have signed recusal letters effective March 10, 2020.



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where individual partnership members are allowed to separately participate in FCC spectrum auctions, and thus find both Comcast and Midco eligible to bid.¹⁸

Because of the impending short-form filing window, which will close on May 7, 2020,¹⁹ Midco seeks expedited action on this waiver petition to allow Midco and Comcast to independently plan for Auction 105.

Respectfully submitted

_____/s/_____

Christina H. Burrow
Counsel to Midcontinent Communications

¹⁸ See, e.g., 47 C.F.R § 1.2105(a)(3) (The limit on filing multiple auction applications “shall not apply to any qualifying rural wireless partnership and individual members of such partnerships.”).

¹⁹ *Auction of Priority Access Licenses for the 3550-3650 MHz Band Rescheduled to Begin July 23, 2020*, DA 20-330, AU Docket No. 19-244 (rel. Mar. 25, 2020).



Declaration of Scott Anderson on Behalf of Midcontinent Communications Investor, LLC

1. My name is Scott Anderson. I am the Chief Legal Officer of Midcontinent, Communications Investor, LLC ("MCI"). I am making this declaration in connection with the request for waiver of Midcontinent Communications ("Midco") of the FCC's auction rules to the extent necessary to allow Midco to file a short-form application to participate in FCC Auction 105. I am authorized to make this declaration on behalf of MCI.
2. All of the statements in this declaration are true to the best of my knowledge, information, and belief.
3. MCI holds a 50% partnership interest in Midco. The terms of this interest are governed by a partnership agreement between MCI and Comcast Midcontinent, LLC, an indirectly owned subsidiary of Comcast Corporation ("Comcast Midcontinent"), which holds the remaining fifty percent (50%) interest in Midco. No Comcast entity holds any direct or indirect interest in MCI.
4. MCI is wholly owned by two senior executives who are currently working for Midco.
5. MCI is the Managing General Partner of Midco. The partnership agreement gives MCI, as the Managing General Partner "complete and unrestricted power and authority to manage the day-to-day business and operations of the Partnership [i.e., Midco] in its sole and absolute discretion." The partnership agreement does not allow Comcast Midcontinent or any affiliate of Comcast Midcontinent to have any role in the day-to-day business or operations of Midco.
6. The terms of the partnership agreement are consistent with the actual management and operations of Midco. MCI makes all decisions concerning services to be offered, pricing, marketing, customer service, geographic expansion, or any other operational aspect of the business. Neither Comcast Midcontinent nor any other affiliate of Comcast Midcontinent makes any or has any involvement in those matters.
7. Under the partnership agreement, Comcast Midcontinent's role is confined to review of fundamental, extraordinary partnership decisions in which passive investors customarily have a role, including mergers and acquisitions, related-party transactions, and dissolution of the partnership. These decisions are made through the Management Committee of Midco. MCI appoints three of the five members of the committee, and Comcast Midcontinent appoints the remaining two members. None of the matters that are subject to Comcast Midcontinent's review relate to day-to-day operation of the business.
8. Midco's decision to apply for Auction 105 was made solely by Midco and neither the Management Committee nor Comcast Midcontinent participated in the decision to apply. Midco has not provided and will not provide Comcast Midcontinent with its Auction 105 bids or bidding strategies, or Midco's analysis of the post-auction marketplace, until the anti-collusion rule "quiet period" ends.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 14, 2020.

Scott Anderson
Chief Legal Officer
Midcontinent Communications Investor, LLC



Direct Dial: 605-274-3020
Email: scott.anderson@midco.com

April 14, 2020

Derek H. Squire
Comcast Corporation
1701 John F. Kennedy Blvd.
Philadelphia, PA 19103-2328

Via email at derek_squire@comcast.com

Re: Auction of Priority Access Licenses for the 3550-3650 MHz Band (Auction 105)

Dear Derek:

Midco affirms that the Management Committee has not discussed Midco's involvement in the upcoming FCC auction of Priority Access Licenses for the 3550-3650 MHz Band (Auction 105), and will not do so until after the expiration of the post-auction deadline for winning bidders in Auction 105 to submit their down payments. Neither Comcast Midcontinent nor any of its indirect ownership entities is involved in or has had any communications with Midco regarding Midco's Auction 105 bids or bidding strategies.

Once the "quiet period" starts at 6 p.m. EST on May 7, 2020, there will be no communications between Midco and Comcast Midcontinent or any of its indirect ownership entities regarding any aspect of Midco's involvement with Auction 105. Midco has implemented strict anti-collusion protocols. For example, Midco bifurcated its Auction 105 team into a technical team and a bidding team. Only the bidding team, comprised of less than ten Midco employees, will have access to bidding information. Each member of the Auction 105 team will receive training on the anti-collusion rule by the Cooley firm, Midco's outside counsel for Auction 105, and will sign an agreement to follow the protocols.

Midco Auction 105 team members will not disclose any information about Midco's Auction 105 involvement to any third party, including but not limited to the Management Committee, and all persons employed by any other Comcast entity. Midco will review all periodic materials provided to Comcast or any Comcast personnel, such as monthly financial reports, to ensure compliance with the foregoing protocols. Please contact me with any questions regarding these protocols.

Sincerely,

Scott Anderson
Chief Legal Officer
Midcontinent Communications